

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Respondent,

-v-

DECISION AND ORDER

08-CV-0165A,

01-CR-0057A

THOMAS HALL,

Defendant-Petitioner.

Defendant-Petitioner, Thomas Hall, following a plea of guilty to one count of conspiracy to distribute a controlled substance, was sentenced in this Court (Hon. John T. Elfvin)¹ on April 26, 2004, to 95 months imprisonment and four years supervised release. He was also ordered to pay child support and enroll in a drug and alcohol treatment program. (*U.S. v. Hall*, 01-CR-0057, Docket No. 201, Judgment). On January 28, 2005, Hall, *pro se*, filed a motion for an extension of time to file a notice of appeal from the judgment of conviction based on a claim that he had requested his CJA appointed counsel to file a notice of appeal and that numerous attempts to contact his counsel had been unsuccessful. (*Id.*, Docket No. 225, Motion). On April 5, 2006, the Court, following court-ordered briefing, denied Hall's motion, (*id.*, Docket No. 239,

¹This matter was reassigned to the undersigned following Senior District Judge John T. Elfvin's decision to take inactive status.

Order), and Hall filed a notice of appeal from said Order (*id.*, Docket No. 240, Notice of Appeal).

On January 16, 2008, the Court of Appeals issued an Order, which was issued as a Mandate on February 13, 2007 and filed in this Court on February 25, 2008 (*id.*, Docket No. 25, Mandate), granting the government's motion for a summary affirmance to the extent that the appeal challenged this Court's determination that it was without jurisdiction to grant Hall's motion for an extension of time to appeal from the judgment of conviction, but construing, in the interests of justice, Hall's motion for an extension of time to file an appeal as a motion to vacate, set aside or correct the sentence under 28 U.S.C. § 2255, with directions on remand for this Court to treat the motion for an extension of time to file an appeal as a motion under § 2255 and to permit Hall the opportunity to file an amended motion, if necessary, to present his claims and to decide the motion accordingly.

IT IS HEREBY ORDERED as follows:

1. Pursuant to the Court of Appeals' Mandate, Hall shall file with this Court and serve on the United States Attorney for the Western District of New York an amended motion under 28 U.S.C. § 2255 no later than **April 9, 2008**. If petitioner does not file an amended motion the Court will treat the initial motion for an extension of time to file an appeal as the operative motion under § 2255 in

this proceeding. Petitioner may also file an application for the appointment of counsel.

2. Pursuant to Rules 4 and 5 of the Rules Governing Section 2255 Proceedings in the United States District Courts, the United States Attorney shall file and serve an **answer** to the amended motion no later than **30 days from receipt of the amended motion or, if no amended motion is filed and served, an answer shall be served and filed no later than May 10, 2008**. The answer shall respond to the allegations of the amended motion and shall state whether Hall has used any other available federal remedies including any prior post-conviction motions under these rules or those existing previous to the adoption of the present rules.

The government is also ordered to file and serve by the above date a **memorandum of law** addressing each of the issues raised in the amended motion and including citations of relevant supporting authority.

3. Hall shall have **twenty (20) days** upon receipt of the answer to file a written response to the government's answer and memorandum of law.

4. Within twenty (20) days of receipt of the amended motion or no later than **April 29, 2008**, if no amended motion is filed, the government may file a motion for a more definite statement or a motion to dismiss the amended motion, accompanied by appropriate exhibits which demonstrate that an answer to the amended motion is unnecessary. The timely filing of such motion shall extend

the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

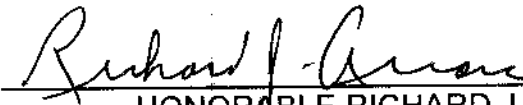
5. The Clerk of Court is directed to serve a copy of the initial motion for an extension of time to file an appeal (01-CR-0057, Docket No. 225), together with a copy of this order, upon the United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202.

6. The Clerk of the Court is directed to forward to Hall a Form Motion under 28 USC § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody and an Application for Appointment of Counsel.

7.. All docketing for this action shall be made in the related criminal action 01-CR-0057A.

**PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS
AND CORRESPONDENCE TO THE UNITED STATES ATTORNEY.**

IT IS SO ORDERED.



HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: March 7, 2008